

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 30, 2018**

Sheila T. Reiff  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2017AP1586-CR**

**Cir. Ct. No. 2016CM002512**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JUSTICE G. ARMSTEAD,**

**DEFENDANT-APPELLANT.**

---

APPEAL from an order of the circuit court for Milwaukee County:  
JEAN M. KIES, Judge. *Dismissed.*

¶1 DUGAN, J.<sup>1</sup> Justice G. Armstead appeals an order denying his motion for postdisposition relief. In his motion, Armstead argued that neither the

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

psychiatric opinion evidence nor the trial court's reasoning applied the proper legal standard for ordering involuntary medication. Because the order for Armstead's commitment for conditional release expired on August 4, 2017, and he is no longer subject to the order for involuntary medication, the issues presented are moot. Accordingly, we dismiss Armstead's appeal.

## BACKGROUND

¶2 On July 30, 2016, Armstead was charged with misdemeanor criminal damage to property and misdemeanor entry into a locked building. On October 26, 2016, Armstead entered a plea of not guilty by reason of mental disease or defect (NGI). On January 20, 2017, in the first phase of the NGI trial, Armstead pled no contest to the criminal damage to property charge and the State moved to dismiss the entry into a locked building charge.<sup>2</sup> He then waived his right to a jury trial in the second phase and the matter proceeded to trial before the trial court.

¶3 After hearing the testimony, the trial court found that Armstead was NGI and that he was appropriate for conditional release into the community for a period of six months.<sup>3</sup> The trial court also found that Armstead should be

---

<sup>2</sup> This case relates to the bifurcated trial described in WIS. STAT. §§ 971.15 and 971.16. A bifurcated criminal trial consists of two phases: (1) the guilt phase; and (2) the responsibility phase. *See* WIS. STAT. § 971.165(1)(a). When a criminal defendant pleads guilty in the first phase and not guilty by reason of mental disease or defect in the second phase, after taking the defendant's plea the trial proceeds to the second phase. Sec. 971.165(1)(a). In the second phase the jury or trial court considers whether the defendant had a mental disease or defect at the time of the crime and whether, "as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law." Sec. 971.15(1).

<sup>3</sup> When a person is found appropriate for conditional release, a plan is prepared to address the person's treatment and services, if any, that the person will receive in the community. WIS. STAT. § 971.17(3)(d).

involuntarily medicated. A hearing was held on February 9, 2017, and the trial court approved the conditional release plan.

¶4 Armstead filed a motion for postdisposition relief on July 20, 2017, which challenged the involuntary medications order. He argued that neither the psychiatric opinion evidence nor the trial court's reasoning applied the proper legal standard required for ordering involuntary medication treatment. The trial court denied the motion on July 26, 2017. The order committing Armstead to conditional release expired and he was discharged from his commitment on conditional release on August 4, 2017. A notice of appeal was filed on August 14, 2017.

## **DISCUSSION**

¶5 The State contends that the issues raised in this appeal are moot because (1) the order committing Armstead to conditional release and directing that he be involuntarily medicated has expired and (2) he was discharged from his commitment on conditional release before this appeal was filed. While Armstead acknowledges that he is no longer subject to the conditional release plan or the involuntary medication order, he argues that the appeal is not moot because it involves an issue of great public importance that will arise frequently. He also argues that the issue of his involuntary medication is likely to be repeated and it would evade review because his type of case typically will be resolved before

completion of the appeal process. Armstead asserts that CCAP reflects that he is now charged in two new felony cases in the Milwaukee County Circuit Court.<sup>4</sup>

¶6 An issue is moot when its resolution will have no practical effect on the underlying controversy. See *Winnebago Cty. v. Christopher S.*, 2016 WI 1, ¶31, 366 Wis. 2d 1, 878 N.W.2d 109. In *Christopher S.*, the court noted “[w]e have stated that there is an apparent lack of a live controversy when an appellant appeals an order to which he or she is no longer subjected.” *Id.*, ¶31 (citation and internal quotation marks omitted). In Armstead’s case, the issues are moot because he is no longer subject to the orders being appealed. See *id.*

¶7 However, even when issues are moot, we may exercise our discretion and address a moot issue if it

(1) is of great public importance; (2) occurs so frequently that a definitive decision is necessary to guide [trial] courts; (3) is likely to arise again and a decision of the court would alleviate uncertainty; or (4) will likely be repeated, but evades appellate review because the appellate review process cannot be completed or even undertaken in time to have a practical effect on the parties.

*Id.*, ¶32.

¶8 We conclude that the circumstances in this case do not convince us that we should exercise our discretion to consider the issues raised by Armstead that are moot. First, the order committing Armstead to community release and the order for involuntary medication treatment expired prior to this appeal being filed. Second, a decision in this case would have no practical effect. Reversing an

---

<sup>4</sup> Wisconsin’s CCAP (Consolidated Court Automation Programs) is an online website that contains information entered by court staff of which this court may take judicial notice. See *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

expired order for involuntary medication that cannot be renewed will have no bearing on Armstead's circumstances. Although Armstead argues that the issue may be repeated because he is now charged with two felonies, the fact that he is facing new charges does not mean that the issue that the trial court misapplied the statutory standard will arise again.<sup>5</sup>

¶9 Additionally, if for some reason the issue of involuntary medication were to arise, the trial courts in those cases could not rely on any medical opinions in this case. The issue of whether Armstead could be subject to involuntary medication would depend upon his medical condition at the time the issue arises, not his medical condition during this case. The trial court would appoint an expert to examine Armstead and a report would be submitted. There is no indication that the doctor who examined Armstead in this case would be the doctor who would examine him in the new cases. Further, the trial court in the new cases is not the same court that decided this case. In determining whether involuntary medication is appropriate, the trial court would apply the proper standards under WIS. STAT. § 971.17(3), in light of the controlling case law, to the evidence introduced in any hearing held by that trial court. Such a hearing and decision by that trial court would be independent of proceedings in this case.

¶10 Further, although the standards to be applied when a court orders involuntary medication treatment are matters of great public importance, those standards have been defined by our Supreme Court in recent decisions. *See*

---

<sup>5</sup> In his reply brief, Armstead states that in his new cases he was found not competent and not competent to refuse medication. However, Armstead does not contend that in those cases, the trial court misapplied the statutory standard on reaching its conclusions. In addition, CCAP notes that Armstead was found competent in both cases on April 10, 2018.

*Christopher S.*, 366 Wis. 2d 1, ¶¶50-56, and *Outagamie Cty. v. Melanie L.*, 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607. Moreover, a decision by this court would not be a definitive decision that would guide trial courts or alleviate uncertainty. Because this decision is by a single judge it may not be cited in any court of this state as precedent or authority.<sup>6</sup> See WIS. STAT. § 809.23(3)(a).

## CONCLUSION

¶11 We conclude that Armstead's appeal is moot. He has been discharged from his commitment to conditional release and the order for involuntary medication has expired, he is no longer subject to it, and it cannot be extended. Further, for the reasons stated above, we decline to exercise our discretion to address the moot issues.

*By the Court.*—Appeal dismissed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

---

<sup>6</sup> Although there are exceptions to the general rule, none of those exceptions apply in this case.

